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KOBAYASHI, SUGITA & GODA

Lex R. Smith 3485-0

Thomas H. Yee 7344-0

First Hawaiian Center

999 Bishop Street, Suite 2600

Honolulu, Hawaii 96813

Telephone No. (808) 539-8700

Facsimile No. (808) 539-8799

Email: lrs@ksglaw.com

KIRKLAND & ELLIS LLP

Michael E. Baumann (CA Bar No. 145830)

Erin N. Brady (CA Bar No. 215038)

777 South Figueroa Street

Los Angeles, CA 90017

Telephone No. (213) 680-8400

Facsimile No. (213) 680-8500

Email: mbaumann@kirkland.com

Counsel for Defendant

POST-CONFIRMATION TRUST

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAR 29 2007

at 3 o'clock and 15 min. M  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,  
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK  
) (Copyright)

) **NOTICE OF CROSS-APPEAL**

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### **NOTICE OF CROSS-APPEAL**

Notice is given that Defendant Post-Confirmation Trust (the “PCT”)<sup>1</sup> appeals to the United States Court of Appeals for the Ninth Circuit from the *Order Adopting and Modifying the October 25, 2006, and December 4, 2006, Reports of Special Master on the Parties’ Motions for Attorneys’ Fees and Costs* (the “Order”) entered in this action on March 2, 2007. The PCT specifically appeals the District Court’s findings in the Order that Plaintiff, as opposed to the PCT, was the prevailing party with respect to Plaintiff’s claims under the Copyright Act and its corresponding decision to deny the PCT’s request for attorney’s fees and costs under section 505 of the Copyright Act. A true and correct copy of the Order is attached as Exhibit A to the PCT’s Civil Appeals Docketing Statement, filed concurrently herewith.


Plaintiff filed his Notice of Appeal from the Order on March 14, 2007, and this cross-appeal is timely pursuant to Federal Rules of Appellate Procedure 4(a)(1) and 4(a)(3).

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<sup>1</sup> The PCT is a trust created pursuant to the *Debtors’ and Official Committee of Unsecured Creditors’ Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and its Filing Subsidiaries under Chapter 11 of the United States Bankruptcy Code* (the “Plan”), which was approved by the United States Bankruptcy Court for the District of Delaware (Case No. 03-10945 MFW) on July 26, 2004. The PCT is responsible for and has the power to administer certain post-confirmation responsibilities under the Plan, including litigation involving claims by and against Fleming Companies, Inc.

There are a number of related cases pending in the Ninth Circuit Court of Appeals, including Case No. 05-12553, Case No. 05-15347, Case No. 06-16199, and Case No. 07-15447.

DATED: Honolulu, Hawaii, March 29, 2007.

  
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KOBAYASHI, SUGITA & GODA  
Lex R. Smith (659-0)  
Thomas H. Yee (7344-0)  
Suite 2600 First Hawaiian Center  
999 Bishop Street  
Honolulu, HI 96813  
Telephone: (808) 539-8700  
Facsimile: (808) 539-8799

and

KIRKLAND & ELLIS LLP  
Michael E. Baumann (CA Bar No. 145830)  
Erin N. Brady (CA Bar No. 215038)  
777 South Figueroa Street  
Los Angeles, CA 90017  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500

Co-Counsel for the Post Confirmation Trust